

**Schumer-Brown-Casey “Borrower’s Protection Act of 2007”**  
*A Proposal to Establish a Fiduciary Duty and other Standards of Care for Mortgage  
Brokers and Originators and to Establish Standards to Assess a Consumer’s Ability to  
Repay and for Other Purposes*

**Bill Summary**

The bill seeks to regulate mortgage brokers and originators under the Truth in Lending Act (TILA) by establishing on behalf of consumers a fiduciary duty and other standards of care. In addition, the bill outlines standards for brokers and originators to assess a borrower’s ability to repay a mortgage and holds lenders accountable for brokers and appraisers. The enforcement mechanism applied to this new section is those that currently apply under TILA.

**The Borrower’s Protection Act of 2007:**

- 1) Establishes a fiduciary duty for mortgage brokers and other non-bank mortgage originators;
- 2) Creates a faith and fair dealing standard for all originators;
- 3) Requires originators to underwrite loans at the fully indexed rate;
- 4) Requires originators to create escrow accounts to pay taxes and hazard insurance on subprime loans;
- 5) Prohibits steering (i.e. brokers may not direct or counsel a consumer to rates, charges and principal amount or prepayment terms that are not appropriate or suitable for the them);
- 6) Holds lenders responsible for policing their associated appraisers and brokers and;
- 7) Prohibits originators from influencing appraisal process

**Background**

Subprime loans are a relatively new product in the mortgage industry. Despite its relative youth, this segment of the mortgage market has experienced rapid growth over the past several years. In 2003, subprime loans made up only 8% of total mortgage originations, but this figure had grown to 20% in 2005 and 2006. When measured by value of the outstanding loans, the subprime market almost quadrupled between 2003 and 2007, from \$332 billion to \$1.3 trillion. This growth in the subprime market over the past several years was driven primarily by brokers and non-bank lenders. By 2005, 77% of subprime loans were issued by brokers and non-bank lenders. It is now becoming apparent that these mortgage professionals took advantage of the lack of federal regulations and low interest rates to loosen underwriting standards and issue millions of loans that borrowers cannot afford. The current federal regulatory structure provides no mechanism for restricting the predatory practices of these non-bank actors.

The structure of the modern mortgage market provides little or no incentive for brokers to originate sustainable loans. Brokers are paid primarily by fees due at closing and only face penalties if the loan defaults within the first three months of the term, before it can be sold to the secondary mortgage market. As a result, many brokers steered their clients

into subprime adjustable rate loans, which provided the highest fees, even if these loans were disadvantageous or even completely unaffordable for borrowers.

Similarly, for an extended period of time, non-bank lenders had limited incentives to originate sustainable home loans. As long as home prices were rising, interest rates were low and investors seeking high returns were providing easy access to capital, lenders were able to refinance troubled borrowers out of their loans. They were even rewarded for these predatory practices by reaping the financial windfall from prepayment penalties and closing fees built into the loans. In recent months, the slowdown in the housing market has revealed the dangers of this activity and caused dozens of subprime mortgage lenders to go out of business.

The prevalence of unsustainable loans in the subprime mortgage market has produced an explosion in foreclosures across the country over the past year. Foreclosures have increased almost 50% since 2005. As a result of abusive practices, at least 2.2 million subprime home loans made in recent years have already failed or will end in foreclosure, costing homeowners as much as \$164 billion.